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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,464	02/27/2002	Donald W. Crowe JR.	01-4951	1837

7590 11/12/2004
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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/085,464

Applicant(s)

CROWE, DONALD W.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 8-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 30, 2003 has been entered.

2. Claims 6 and 8-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

3. The disclosure is objected to because of the following informalities: Page 5, line 14, "4-8" apparently should be --5-8--.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "open outer end" and "floor" set forth in claim 1 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

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5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to whether the "toilet bolt head" is intended to be part of the claimed combination since structure of the "flange" is defined as being connected thereto (ln. 17), but no positive structural antecedent basis therefor has been defined.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeAngelis, Yavitch and Angelone.

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The DeAngelis reference discloses a toilet flange comprising: an arcuate plate 24 including a bracket (unnumbered, Fig. 4 at top or bottom) having an open outer end/shank opening/bracket entry (at outer perimeter) and an end wall (Fig. 4, hidden lines); and floor bolt apertures (receiving 26). Therefore, DeAngelis teaches all claimed elements except for the bracket including raised side walls and a floor.

Although the bracket of the DeAngelis toilet flange does not include raised side walls, as claimed, attention is directed to the Yavitch reference which discloses an analogous toilet flange which further includes a bracket 44 having raised side walls (connecting 22 and 50). Therefore, in consideration of Yavitch, it would have been obvious to one of ordinary skill in the art to associate raised side walls with the DeAngelis bracket in order to facilitate installation.

Although the bracket of the DeAngelis toilet flange does not include a floor, as claimed, attention is directed to the Angelone reference which discloses an analogous toilet flange which further includes a bracket (at 13 or 14) having a floor 16,17. Therefore, in consideration of Angelone, it would have been obvious to one of ordinary skill in the art to associate a floor with the DeAngelis bracket in order to prevent bolts from falling through the flange.

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8. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeAngelis, Yavitch and Angelone as applied to claim 2 above, and further in view of Bressler.

Re claim 3, although the DeAngelis fastener plate 24 is not two inches in length, as claimed, attention is directed to the Bressler reference which discloses an analogous fastener plate which further can be less than 180° in extent (col. 3 lns. 42-45). Therefore, in consideration of Bressler, it would have been obvious to one of ordinary skill in the art to associate a shorter length with the DeAngelis fastener plate in order to facilitate repairing a broken closet flange. The choice of specific size would appear an obvious choice to be made depending upon the size of the break, desired strength, etc.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeAngelis, Yavitch and Angelone as applied to claim 1 above, and further in view of Buchanan, Jr.

To the extent the floor bolt apertures of the DeAngelis toilet flange are not "arcuate", as claimed, attention is directed to the Buchanan, Jr. (Buchanan) reference which discloses an analogous toilet flange which further includes elongate floor bolt apertures 2. Therefore, in consideration of Buchanan, it would have been obvious to one of ordinary skill in

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the art to associate elongate apertures with the DeAngelis toilet flange in order to facilitate securement.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Kispert reference discloses a toilet flange having features in common with the instant invention.

11. Applicant's arguments with respect to claim 1 at pages 11-12 of the response filed December 30, 2003 have been considered but are moot in view of the new ground(s) of rejection.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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